

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.822 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Devendra Kumar Singh, aged about 54 Years, Son of Late Rambriksh Singh, resident of Mohalla Ashok Nagar, Road No. 11, Kankarbagh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna.
4. The District Magistrate, Patna.
5. The Superintendent of Police, Patna City.
6. The Executive Magistrate, Patna.
7. The Inspector of Police-cum-Incharge, Kankarbagh.
8. Dr. Chander Shekhar Son of Late Jhalendra Narayan Singh, Resident of Village and Post of Kheshav Nagar, P.S. Chautham, District- Khagaria.

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Shama Sinha, Advocate
Ms. Kumari Shubham, Advocate
For the Respondent/s : Mr. Nasrul Hoda Khan, S.C.1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 14-03-2018

Heard learned counsel for the petitioner and
learned counsel representing the State.

This Criminal Writ Application has been listed



on urgent motion made by learned counsel representing the petitioner on 12.03.2018, when the court directed for listing of the matter today subject to removal of the defects. Since the matter was not listed today in the cause list, again on mention made by learned counsel for the petitioner, the case was notified for hearing.

Learned counsel for the State was present at the time of mentioning on 12.03.2018 and is once again present at this stage when the matter has been listed and heard.

The present criminal writ application has been preferred for issuance of a mandamus to protect property and life of the petitioner and to direct the respondents to refrain from carrying out the demolition of and dispossession from the property in question, as according to the petitioner, he along with his brother has acquired right, title, interest and possession over the land in question through their mother who had obtained the sale deed in respect of the land. It is also stated that over the period a school was being run on that piece of land which was purchased by the mother of this petitioner.

Learned counsel representing the petitioner submits that even though one of the brothers of this petitioner had earlier moved this court in Civil Writ Jurisdiction Case



No. 15107/2016 which was disposed of vide order dated 19.11.2016 taking note of the submission of the parties and on the statement made by learned counsel representing the petitioner in the said case that he would approach the competent forum which would be available under law, the present petitioner has chosen to invoke criminal writ jurisdiction in this court for the reliefs prayed in the writ application.

In course of submissions, learned counsel has vehemently tried to convince the court that the execution case which is going on and in which an order dated 29.03.2017 has been passed by learned Sub-Judge-V, Patna is virtually not for execution of any decree involving the land of this petitioner. According to her, the decree holder of Title Partition Suit No. 119/1962 has sold a different portion of the CS Plot No. 247, but in the garb of execution of the said decree the property of this petitioner is being tried to be taken over and in course of that demolition of the constructed portions have been done on Saturday and Sunday last.

Learned counsel submits that in these circumstances petitioner has approached this court as according to him no suit or proceeding at all is pending against



this property in any court of law and if that is so he would be entitled to get protection of this property and life through a constitutional court.

Per contra learned counsel representing the State while opposing the writ application submits that the application is thoroughly misconceived and is in fact a kind of review application of the order dated 19.11.2016 passed in CWJC No. 15107/2016. He has further pointed out that, in the said writ application, brother of the present petitioner had the same argument and submission before the learned writ court and the learned writ court having taking note of his submission and the submission of private respondent no. 6 found that this being a case involving disputed questions of facts cannot be gone into in the present proceeding. On such view having been taken by the learned writ court at that point of time the brother of this petitioner sought liberty to approach the competent forum which would be available to him under law. The writ court granted liberty to the brother of the petitioner to approach the competent forum while protecting the property from demolition for a period of 30 days. Thereafter brother of the petitioner filed an application in the executing court in Execution Case No. 01/2012 giving rise to Miscellaneous Case



No. 01/2016. The application was filed under order XXI Rule 97, 101 read with 151 of the Code of Civil Procedure for adjudication of right, title, interest and possession of the petitioner over 4 Kathas of land out of decreetal plot of 1.03 acres being Tauzi No. 167, Khata No. 29 CS Plot no. 247 at Mauza Changar, P.S. Kankarbagh, district – Patna presently known as Ashok Nagar, Road No. 11, Kankarbagh, Patna. By a detail order the learned Executing Court rejected the said application holding that the same was not maintainable.

Instead of challenging the said order or taking recourse to an appropriate remedy in accordance with law this time the present petitioner has chosen to file this criminal writ application.

Having heard learned counsel for the petitioner and learned counsel representing the State, this Court is of the considered opinion that the petitioner has moved this court by applying for a wrong remedy. In the nature of the disputes once the civil writ application of the brother of this petitioner was disposed of taking note of the fact that it involves disputed question of facts, on the same facts the petitioner cannot maintain another writ application muchless a criminal writ. The petitioner is unable to make out a case for exercise of



jurisdiction by a constitutional court. The court rather feels that petitioner has wasted the court’s time and is only trying to delay the execution of the decree by filing one case after another but before a wrong forum. This court was willing to impose some cost upon the petitioner but at the last the court has been persuaded not to impose the cost. In any case the petitioner must be cautious in future in invoking the jurisdiction of the constitutional court in the kind of the disputes which he has attempted to raise firstly through his brother and then himself.

The application has no merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2018
Transmission Date	15.03.2018

